

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

NAGESH PALAKURTHI,
Plaintiff,

v.

Case No. 21-cv-10707
Hon. Linda V. Parker

WAYNE COUNTY, in its municipal
capacity; and ERIC R. SABREE, in
his official capacity current Wayne
County Treasurer,
Defendants

RESPONSE

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**RESPONSE IN OPPOSITION TO
DEFENDANTS' MOOTED MOTION TO DISMISS**

On May 21, 2021, Defendants filed a motion to dismiss the complaint pursuant to Rule 12(b). **ECF No. 8.** On June 11, 2021, Plaintiff, by newly retained counsel, filed an amended complaint as a matter of right pursuant to Rule 15 expanding the case. **ECF No. 10.** Said rule permits an amendment by right 21 days after service of a motion made pursuant to FRCP 12(b). **FRCP 15(a)(1)(B).**

When filed, an amended complaint supersedes the original complaint, which becomes a nullity. See *Drake v. City of Detroit*, 266 F.App'x 444, 448 (6th Cir. 2008); *Klyce v. Ramirez*, 852 F.2d 568, 1988 WL 74155, at * 3 (6th Cir. July 19, 1998) (per curiam) (unpublished table opinion) (collecting cases from other circuits); see also *Calhoun v. Bergh*, 769 F.3d 409, 410 (6th Cir.

2014). An amended complaint filed after a motion to dismiss has been filed renders the motion to dismiss moot. See *Bancoult v. McNamara*, 214 F.R.D. 5, 13 (D.D.C. 2003) (“Because the original complaint now is superseded by the amended complaint, the court denies without prejudice all pending motions pertaining to the original complaint.”); *Tiffany v. Mich Dep’t. of Health and Human Servs.*, 2015 U.S. Dist. LEXIS 126368, at *2 (E.D. Mich, Sep. 22, 2015) (citing *Smith & Nephew Inc. v. Fed. Ins. Co.*, 113 F. App’x 99, 102 (6th Cir. 2004) and *Mize v. Blue Ridge Bank*, No. 8:12-CV-2763-JMC-JDA, 2013 WL 1766659, at *1 (D.S.C. Feb. 12, 2013) (collecting cases)); *Ling v. Twp of Richland*, 2015 U.S. Dist. LEXIS 10831, at *3 (ED Mich, Jan. 30, 2015) (same).

RELIEF REQUESTED

WHEREFORE, the Court is requested to deny (without prejudice) Defendants’ motion to dismiss as moot.

Date: June 11, 2021

RESPECTFULLY SUBMITTED:

/s/Philip L. Ellison

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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I, the undersigned attorney of record, hereby certify that on the date stated below, I electronically filed the foregoing with the Clerk of the Court using the ECF system which will send notification of such filing to all counsel or parties of record.

Date: June 11, 2021

RESPECTFULLY SUBMITTED:

/s/Philip L. Ellison
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